

The defendants argue that the plaintiff has not shown that Dr. Higgs' condition is dire enough to justify the taking of his deposition. [Doc. 79].

Rule 27(b) of the Federal Rules of Civil Procedure allows for the taking of depositions while a case is on appeal upon a showing that there is a danger that testimony will be lost by delay. May v. International Bus. Associates, Inc., No. 85-3732, 1986 WL 16014 (6th Cir. Apr. 17, 1986), cert. denied, 479 U.S. 834 (1986) (citing Arizona v. California, 292 U.S. 341, 347-48 (1934)).

In the opinion of the Court, the plaintiff now has made a showing that the deposition testimony of Dr. Higgs reasonably could be lost if the plaintiff is not permitted to depose him pending appeal. Accordingly, Plaintiff's Motion To Reconsider [Doc. 77] is **GRANTED**, and this Court's earlier Order [Doc. 70] is hereby altered and amended to **GRANT IN PART** the Motion to Take Depositions [Doc. 64] so as to allow the deposition of Ronald D. Higgs, M.D.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge